

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

DESTINED C.M.D. GEORGE,

Plaintiff,

V.

C.O. PUCKETT, ET AL.,

Defendants.

Case No. 7:19CV00846

OPINION AND ORDER

By: James P. Jones
United States District Judge

Destined C.M.D. George, Pro Se Plaintiff; Timothy E. Davis, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL, CRIMINAL JUSTICE & PUBLIC SAFETY DIVISION, Richmond, Virginia, for Defendants.

The plaintiff, Destined C.M.D. George, a state inmate, filed this action under 42 U.S.C. § 1983 against the defendants, correctional officers at the prison. The case is before me on the magistrate judge's Report and Recommendation (R. & R.) and the plaintiff's Objection thereto. After a de novo review, I will accept the magistrate judge's recommendation and enter judgment for the defendants.

The plaintiff alleged in his Complaint that one of the defendants sexually assaulted him by squeezing and smacking his buttocks during a body search and that when he complained, the other defendant retaliated against him by refusing him a haircut and use of the “kiosk.” Compl. 3, ECF No. 1. The defendants filed a summary judgment motion, which was fully briefed. By Order and Opinion entered

February 18, 2021, I denied summary judgment and referred the case to the magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) to conduct an evidentiary hearing and submit an R. & R. on the question of whether or not the established grievance procedures were available to the plaintiff. *George v. Puckett*, No. 7:19CV00846, 2021 WL 631392, at *3 (W.D. Va. Feb. 18, 2021).

The magistrate judge thereafter conducted an evidentiary hearing and submitted an R. & R. on May 5, 2021, in which she set forth findings of fact and conclusions of law and recommended that judgment be entered in favor of the defendants on the ground that the plaintiff had not exhausted his available administrative remedies as required by 42 U.S.C. § 1997e(a). *George v. Puckett*, No. 7:19CV00846, 2021 WL 1783254 at *8 (W.D. Va. May 5, 2021) (Sargent, J.).

The plaintiff filed a timely Objection to the R. & R. In his Objection, he asserts two grounds. He first contends that the court should have granted his earlier motion for a preliminary injunction, which was denied by the undersigned. *George v. Puckett*, No. 7:19CV00846, 2020 WL 2516401, at *2 (W.D. Va. Apr. 28, 2020). That contention is not relevant to the R. & R. and thus does not constitute a proper ground for the Objection.

In his second ground, the plaintiff points to the testimony of Cathy Meade, the prison's Grievance Coordinator, as recited in the R. & R., that when an inmate files a Regular Grievance, he must attach the Informal Complaint that addressed the same

issue. R. & R. 13, ECF No. 41. The plaintiff argues that since he did not receive a response to his Informal Complaint, his administrative remedies became unavailable. Obj. 2, ECF No. 42.

Whether or not an Informal Complaint was attached to a Regular Grievance was not a material issue before the magistrate judge. The magistrate judge based her recommendation on the fact that the plaintiff had not yet completed the administrative grievance process when he filed the present lawsuit and because she did not find it credible, based on the evidence before her, that the plaintiff had in fact filed the administrative forms as he claimed. R. & R. 17–18, ECF No. 41. The plaintiff's objection is irrelevant to these findings.

I find that the magistrate judge's recommendation is unaffected by the plaintiff's Objection. Accordingly, it is **ORDERED** as follows:

1. The plaintiff's Objection, ECF No. 42, is OVERRULED;
2. The Report and Recommendation, ECF No. 41, is fully ACCEPTED; and
3. The court will enter a separate final judgment in favor of the defendants.

ENTER: July 22, 2021

/s/ JAMES P. JONES

United States District Judge